TABLE OF CONTENTS

SH 2435972

suspect's weapons, images of the involved employees and their weapons, postmortem images, and SCC recordings.

MISCELLANEOUS DOCUMENTS

Industry Station In-Services for September 11, 2017, PM shift

Deputy Khounthavong's training records

Deputy Rodriguez's training records

Administrative Rights Force/Shooting Investigation forms



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

November 19, 2018

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Vincent Hernandez Jr.
J.S.I.D. File #17-0440
L.A.S.D. DR #017-11266-1420-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 11, 2017, fatal shooting of Vincent Hernandez Jr. by members of the Los Angeles Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Luis Rodriguez, #[redacted]
Deputy Benny Khounthavong, #[redacted]

Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
(213) 974-3888
Fax: (213) 626-5125
WEBSITE: http://da.co.la.ca.us

MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Vincent Hernandez Jr.
J.S.I.D. File #17-0440
L.A.S.D. File #017-11266-1420-013

DATE: November 19, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 11, 2017, fatal shooting of Vincent Hernandez Jr. by Los Angeles County Sheriff's Department (LASD) Deputies Luis Rodriguez and Benny Khounthavong. We have concluded that Deputies Rodriguez and Khounthavong acted lawfully in self-defense and in defense of others.

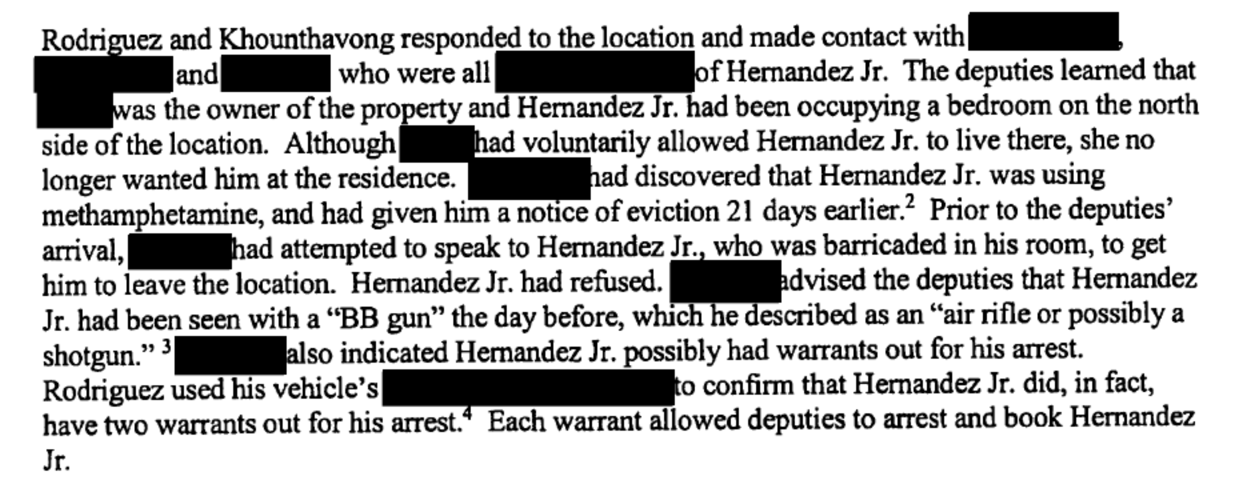
The District Attorney's Command Center was notified of the shooting at approximately 6:20 p.m., on September 11, 2017. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, firearm analysis reports, the autopsy report, crime scene diagrams and sketches, photographic and video evidence, and witness statements submitted to this office by LASD Detective Kevin Acebedo. The voluntary statements of all involved deputies were considered as part of this analysis.

FACTUAL ANALYSIS

On Monday, September 11, 2017, at approximately 4:33 p.m., [redacted] called the LASD Industry Station to report that her [redacted], Vincent Hernandez Jr., was causing a [redacted] disturbance at [redacted] Stichman Avenue in the City of West Valinda. The call was assigned to Deputies Rodriguez and Khounthavong, who were working in full LASD uniform and driving a marked LASD vehicle.[1]

[1] The call was not recorded due to an equipment malfunction. Both Robert L., the employee who took the call, and [redacted] told investigators that [redacted] had indicated Hernandez Jr. was possibly under the influence and refusing to leave. [redacted] told investigators she had indicated he had an air gun. Robert recalled asking


Rodriguez and Khounthavong responded to the location and made contact with [redacted], [redacted] and [redacted] who were all [redacted] of Hernandez Jr. The deputies learned that [redacted] was the owner of the property and Hernandez Jr. had been occupying a bedroom on the north side of the location. Although [redacted] had voluntarily allowed Hernandez Jr. to live there, she no longer wanted him at the residence. [redacted] had discovered that Hernandez Jr. was using methamphetamine, and had given him a notice of eviction 21 days earlier.[2] Prior to the deputies' arrival, [redacted] had attempted to speak to Hernandez Jr., who was barricaded in his room, to get him to leave the location. Hernandez Jr. had refused. [redacted] advised the deputies that Hernandez Jr. had been seen with a "BB gun" the day before, which he described as an "air rifle or possibly a shotgun." [3] [redacted] also indicated Hernandez Jr. possibly had warrants out for his arrest. Rodriguez used his vehicle's [redacted] to confirm that Hernandez Jr. did, in fact, have two warrants out for his arrest.[4] Each warrant allowed deputies to arrest and book Hernandez Jr.

Rodriguez and Khounthavong explained to the [redacted] that they could not evict Hernandez Jr., but could attempt to speak to him. They were directed to Hernandez Jr.'s room, where they identified themselves as police officers and attempted to persuade him to exit the room and speak to them. Hernandez Jr. refused, and advised the deputies that he was a "Sovereign Citizen."[5] The deputies attempted to get Hernandez Jr. to come out by using a ruse; they told Hernandez Jr. they were deploying gas into the room, then made hissing noises outside the door to simulate the sound a gas canister would make. The ruse was unsuccessful.

After the deputies had been speaking to Hernandez Jr. for several minutes, they heard movement in the room. Rodriguez believed the noise sounded like Hernandez Jr. exiting the room via a window. [redacted] informed Rodriguez there was a window from the bedroom to the backyard, however, there was a pit bull loose in the yard. Rodriguez asked [redacted] to secure the dog, and [redacted] entered the yard to do so.

Looking out the open sliding glass doors from the living room, Rodriguez observed that Hernandez Jr. had armed himself with what appeared to be a long black rifle in his left hand, and a black semi-automatic handgun in his right.[6] Khounthavong was still inside the residence, but joined Rodriguez in the sliding glass doorway when he heard Rodriguez yell to Hernandez Jr. to "drop the guns" twice. Initially, Hernandez Jr. had both weapons pointing upward into the air. Both deputies repeatedly ordered Hernandez Jr. to put down the weapons, but Hernandez Jr. ignored their commands. Rodriguez noted that Hernandez Jr. appeared to be upset, and shouted, "I'm a

---

specifically whether or not there were any weapons and receiving a negative response. No information regarding possible weapons was provided to Rodriguez and Khounthavong in the dispatch information.

[2] The notice was a document she printed from the internet. No eviction case had been filed with any court.

[3] A "BB gun" is an air gun that fires plastic or metal pellets.

[4] The warrants were each for $30,000.00. One was for vandalism, and the other for resisting arrest.

[5] "Sovereign Citizen" is a term used to refer to someone who does not acknowledge local, state or federal laws and believes they do not apply to them.

[6] Although the weapons appeared to be real firearms (several deputies indicated they were a "rifle" and "handgun" in their reports documenting their observations of the crime scene after the officer-involved shooting), further examination revealed that both weapons were realistic-looking air guns. Each weapon fired .177 caliber steel projectiles. Both were tested and found to be fully functional.

Sovereign Citizen!"[7] Hernandez Jr. did not acknowledge or comply with repeated orders to put down the guns.

As Khounthavong was using his portable radio to request back-up, Rodriguez observed Hernandez Jr. raise the handgun and point it toward the deputies. Rodriguez then heard a "pop" sound. At that point, Rodriguez fired two to three rounds at Hernandez Jr. using his service weapon. Shortly after, Rodriguez heard the sound of something hitting wood, then felt the pain of something striking his hand. Rodriguez believed Hernandez Jr. was shooting at him. Rodriguez believed the handgun was real, and feared that [redacted] was in the line of fire as he attempted to secure the pit bull in the yard from a position in between the deputies and Hernandez Jr. Rodriguez grabbed [redacted] using his left hand and pulled him into the residence through the sliding glass doorway.[8]

As Khounthavong was making his broadcast, while standing in the sliding glass doorway, he heard the sound of a shot coming from Hernandez Jr.'s handgun, which was now pointed at him and Rodriguez. Khounthavong then felt something hit his face, which he believed was a bullet or piece of shrapnel.[9] Khounthavong fired his service weapon immediately before or during the time he felt the impact on his face. Feeling exposed and without cover in the doorway, Khounthavong moved to the patio area and took cover behind a post. He continued to fire additional rounds from his service weapon until he observed that Hernandez Jr. was down.[10]

Rodriguez observed Khounthavong exit the residence, and take cover behind a wooden support post while firing at Hernandez Jr. Hernandez Jr. was still standing in the backyard, pointing the handgun at the deputies. Rodriguez fired one more round from his service weapon at Hernandez Jr., after which Hernandez Jr. fell backward to the ground in the grass. Hernandez Jr. still held the handgun in his right hand, and was moving on the ground.

---

[7] Investigators discovered that Hernandez Jr. had a "You Tube" channel where he posted videos pertaining to being a Sovereign Citizen. Among the videos posted were recordings of Hernandez Jr. raising his middle finger to a CHP officer in a marked black and white patrol vehicle, entering a Los Angeles Police Department station and verbally confronting two uniformed officers in an angry and incoherent manner, driving a vehicle while fleeing from a marked black and white patrol car, refusing to show his hands when stopped by police officers, and several monologues and conversations with police officers (in person and on the telephone) wherein he espoused Sovereign Citizen ideology. Hernandez Jr., in more than one video, calls or approaches police officers to tell them he will be driving his van without license plates and they do not have the authority to stop him. Hernandez Jr. also "liked" many videos posted by other individuals pertaining to anti-government conspiracy theories, confrontations with police and instructional videos on how to express Sovereign Citizen ideology to police officers. Also "liked" were videos regarding solar eclipses (which Hernandez Jr. had posted a video about, claiming the 2017 solar eclipse was somehow related to Sovereign Citizens), and drinking one's own urine to obtain clarity.

[8] [redacted] advised investigators he observed Hernandez Jr. in the back yard "posturing" in a manner consistent with planning to shoot someone. Hernandez Jr. had said on numerous occasions that he would "defend himself" against LASD deputies were they to come to the house, and "protect himself" against officers were they called to evict him. [redacted] observed that Hernandez Jr. was holding a pellet rifle (which he knew Hernandez Jr. had recently acquired) in his left hand and what he described as a "Glock 9mm handgun" in his right. [redacted] had experience with firearms and believed Hernandez Jr. was armed with a firearm. [redacted] observed Hernandez Jr. aiming the gun at deputies as they repeatedly asked him not to raise the weapon and to put down the weapon. [redacted] heard what he believed was a gunshot fired by Hernandez Jr., aimed at both himself and the deputies. Fearing for his life, [redacted] went down to the ground before hearing the deputies return fire.

[9] After the shooting, both Khounthavong and Rodriguez determined they had not been injured, but were likely struck by pellets fired by Hernandez Jr.'s air gun.

[10] Khounthavong was unsure how many rounds he fired. In total, based upon the number of casings recovered, it appears he fired nine to ten rounds, none of which struck Hernandez Jr.

Rodriguez and Khounthavong radioed for paramedics, then held Hernandez Jr. at gunpoint until additional units arrived to remove the handgun from his hand. Hernandez Jr.'s finger was still on the trigger when an arrest team approached and recovered the weapon. The rifle was recovered from the ground two to three feet from Hernandez Jr.'s body. Hernandez Jr. was pronounced dead at the scene.



Air-gun recovered from Hernandez Jr.'s right hand after the officer-involved shooting.



Air-gun Hernandez Jr. was holding in his left hand at the time of the officer-involved shooting.

Expended casings were recovered from inside the living room and in the rear patio area, consistent with the approximate number of shots each deputy reported firing from the locations. Several pellet holes were located in the interior and exterior of the northwest bedroom. Four pellets were recovered from the patio area as well. Additional pellets were recovered from the backyard, the hallway near the kitchen and inside the kitchen. Trajectory analysis determined that the shots were consistent with Hernandez Jr. firing upon the two deputies from his position in the back yard. Additionally, the pellets were determined to be .177 steel metal projectiles, compatible with Hernandez Jr.'s weapons.

An autopsy was conducted on September 17, 2017, by Los Angeles County Department of Medical Examiner-Coroner Doctors Joseph Vallone and Lawrence Nguyen. Only one gunshot wound was observed during the examination. The wound was to the mid-chest area, and was determined to be the cause of death. The bullet was recovered from soft tissue in Hernandez Jr.'s back during the autopsy.[11] Toxicology testing revealed that Hernandez Jr. had marijuana and methamphetamine in his system at the time of his death.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146. A killing of a suspect by a law enforcement officer is lawful if it was: (1) committed while performing a legal duty; (2) the killing was necessary to accomplish that duty; and (3) the officer had probable cause to believe that (a) the decedent posed a threat of serious physical harm to the officer or others, or (b) that the decedent had committed a forcible and atrocious crime. CALCRIM No. 507, Penal Code section 196. A forcible and atrocious crime is one which threatens death or serious bodily harm. *Kortum v. Alkire* (1977) 69 Cal.App.3d 325, 333.

[11] Subsequent ballistics testing indicated the bullet was fired from Rodriguez' service weapon.

An officer has "probable cause" in this context when he knows facts which would "persuade someone of reasonable caution that the other person is going to cause serious physical harm to another." CALCRIM No. 507. When acting under Penal Code section 196, the officer may use only so much force as a reasonable person would find necessary under the circumstances. *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1147. And he may only resort to deadly force when the resistance of the person being taken into custody "appears to the officer likely to inflict great bodily injury on himself or those acting with him." *Id.* at 1146; quoting *People v. Bond* (1910) 13 Cal.App. 175, 189-190. The prosecution has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

In the instant matter, both Rodriguez and Khounthavong reasonably believed that Hernandez Jr. was aiming a firearm at them. [redacted] also shared this belief that it was a firearm, as did multiple deputies documenting the crime scene. Evidence from the crime scene confirms that steel pellets were, in fact, fired from Hernandez Jr.'s position towards [redacted] and the deputies.

Under these circumstances, it was reasonable for the deputies to believe that their lives, as well as the life of [redacted], were in danger and therefore their use of deadly force was lawful.

CONCLUSION

We find that Deputies Rodriguez and Khounthavong acted lawfully in self-defense and in defense of others when they used deadly force against Vincent Hernandez Jr. We are closing our file and will take no further action in this matter.